

**GOA STATE INFORMATION COMMISSION  
AT PANAJI**

**CORAM:** Shri. M. S. Keny, State Chief Information Commissioner

**Complaint No. 81/SCIC/2012**

Mr. Ashish Nagvenkar,  
Children's Right in Goa (CRG),  
CT-2, Block C, Bldg. A. Nevio Apts.,  
3<sup>rd</sup> Floor, Angod, Mapusa,  
Bardez – Goa ..... Complainant

V/s.

Public Information Officer,  
Department of Women & Child Development,  
Shanta Bldg., St. Inez.  
Panaji – Goa ... Opponent.

**Complainant in person.**

**Opponent in person.**

**ORDER**  
**(17.07.2012)**

1. The Complainant, Shri Ashish Nagvenker, has filed the present Complaint praying to inquire into the matter at the earliest as his application is with regard to the conditions that children are subjected to at Apna Ghar; that the PIO of DW&CD has failed to provide important information about the measures used in Apna Ghar affecting the life of children and that necessary action be taken against the PIO of DWCD under the Right to Information Act and compensation for refusing to provide the necessary information in time.

2. The brief facts leading to the present Complaint are as under:-

That the Complainant, vide his application dated 12.03.2012, sought certain information under Right to Information Act, 2005 ('R.T.I. Act' for short) from the Public Information Officer ('P.I.O.)/Opponent. That the P.I.O. has not replied to his request for information within the time limit specified under Section 7 of the RTI Act. That the P.I.O. has refused to give information by not indicating the reasons for not replying to his application even after completion of thirty days on receipt of his application. That the PIO has intentionally refused to provide information to the applicant as mandated under Sub-section 2 of Section 7. Hence the present Complaint.

3. The case of the Opponent/PIO is fully set out in the reply which is on record. In short it is the case of the Opponent that application seeking information was received in their office on 12.03.2012. That the said application was forwarded to the Probation Officer, Directorate of Women & Child Development, Panaji, requesting to furnish the requisite information immediately, within 5 days and to treat the matter as Most Urgent vide letter dated 14/16<sup>th</sup> March 2012. That since information was not received within 5 days, verbal as well as telephonic inquiries were made with the Staff in the concerned Section of this Directorate. It was revealed that information had been called from the Superintendent-cum-Probation Officer, Apna Ghar, Mercedes, Goa by 21.03.2012 who informed that 15 days time was required for submission of information. That further inquiries with the Section revealed that the Superintendent-cum-Probation Officer, Apna Ghar Mercedes had been telephonically reminded to expedite the information and the same was furnished vide note dated 17.04.2012 and the Complainant was intimated to take delivery of the same vide letter dated 20.04.2012 which was collected by him on 03.05.2012. That all efforts were made to obtain the required information from the Officers having the information with the intention to provide the same to the Complainant and hence there is no malafide intention. That the PIO has been discharging duties as PIO only recently on 21.11.2011 to 16.01.2012 and from 12.03.2012 to date and has not undergone any training in this regard as on date.

4. Heard the Complainant as well as Opponent. According to the Complainant Opponent has failed to provide important information about the measures used in Apna Ghar affecting the life of children.

During the course of arguments it transpired that the Complaint is filed without preferring appeal.

The Complainant on his part states that he can approach the First Appellate Authority.

5. I have carefully gone through the records of the case. It is seen that the Complainant sought certain information consisting of 13 points/items i.e. Sr. No. 1 to 13. That though there is no date on the application the same was received on 12-3- i.e. 12.03.2012. Since information was not furnished the Complainant filed the Complaint on 24.04.2012. It appears from the reply

of the Opponent that the Complainant collected the information on 03.05.2012. It is the grievance of the Complainant that the Opponent has failed to provide the important information about the measures used in Apna Ghar affecting the life of children.

6. First of all it is to be seen whether the Complaint is maintainable without preferring Appeal before the First Appellate Authority (F.A.A.).

It is to be noted here that under Section 18(1) of the R.T.I. Act the Complaint can be filed as provided in sub-section (a) to (f).

I have perused some of the rulings on the point. They are as under:-

(i) In *Virendra Kumar Gupta v/s. Delhi Transport Corporation* (F. No. CIC/AT/C/2007/100372, dated 22.02.2008) it was observed as under:-

“Although Section 18 of the R.T.I. Act accords to a petitioner the right to approach the Commission directly in a Complaint, it would be wholly inappropriate to take up such matters as Complaints when the substance of the petition is about the quality and the extent of the information furnished. Such matters are appropriately the subject matter of the first appeal under section 19(1) and should be first taken up with the First Appellate Authority before being brought to the Commission either as Second Appeal or as Complaint or both.

The initial few words of section 18 are significant. These read as “Subject to the provisions of this Act .....” Constructively interpreted, these would imply that section 18 should be invoked provided other provisions of this Act, relevant to the subject of the petition, have been earlier invoked, or if there are grounds to hold that the petitioner was prevented from invoking those provisions to seek appropriate relief. That is to say, where the avenue of first appeal under section 19(1) is available to a petitioner, he should not be encouraged to skip that level and reach the Commission in complaint under section 18, especially when the relief sought by him could be best provided through the Appellate process. Section 18 cannot be allowed to be used as a substitute for section 19 of the Act.

In consideration of the above, petitioner is directed to file his first appeal before the Appellate Authority and should he still be dissatisfied with the orders of the Appellate Authority he may approach the Commission in Second Appeal/Complaint.”

(ii) In Writ Petition No. 132 of 2011 with Writ Petition No. 307 of 2011, Reserve Bank of India V/s. Rui Ferreira & Others, the Hon'ble High Court of Judicature at Bombay Goa Bench also held that it is not the intention of Parliament to permit parties who seek information to bypass the appeals provided by the Act. It was also observed that it was not permissible for the State Information Commission to entertain the complaint made by Respondent No. 1 under Section 18 of the Act.

(iii) In Chief Information Commissioner & Another v/s. State of Manipur & Anr. (Civil Appeal No. 10787-10788 of 2011 dated 12.12.2011) the Hon'ble Supreme Court has observed that the remedy for such a person who has been refused the information is provided under Section 19 of the Act. It was observed as under:-

“Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act.....”.

In view of all the above the remedy lies of First Appeal.

7. In view of all the above, I am of the opinion that the Complainant should file the Appeal before First Appellate Authority of Directorate of Women & Child Development and the First Appellate Authority to dispose the same in accordance with law. The Complainant to file the appeal within 10 days from the date of receipt of this Order. Since Complaint is filed in time the question of delay should be considered favourably. In case the Complainant is aggrieved by the order of First Appellate Authority he can

certainly prefer Second Appeal/Complaint. Hence, I pass the following Order:-

**ORDER**

The Complainant is directed to file the Appeal before the First Appellate Authority of Directorate of Women & Child Development within TEN (10) DAYS from the receipt of this Order.

The First Appellate Authority to hear the same after giving opportunity to the parties and dispose the same strictly in accordance with law. Complaint is disposed off.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 17<sup>th</sup> day of July, 2012.

**Sd/-**  
**(M. S. Keny)**  
**State Chief Information Commissioner**